



House of Representatives

General Assembly

File No. 690

January Session, 2013

Substitute House Bill No. 6581

House of Representatives, May 2, 2013

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE RECOMMENDATIONS OF THE
CONNECTICUT SENTENCING COMMISSION REGARDING LENGTHY
SENTENCES FOR CRIMES COMMITTED BY A CHILD OR YOUTH.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-125a of the general statutes, as amended by
2 section 59 of public act 13-3, is repealed and the following is
3 substituted in lieu thereof (*Effective October 1, 2013*):

4 (a) A person convicted of one or more crimes who is incarcerated on
5 or after October 1, 1990, who received a definite sentence or aggregate
6 sentence of more than two years, and who has been confined under
7 such sentence or sentences for not less than one-half of the aggregate
8 sentence less any risk reduction credit earned under the provisions of
9 section 18-98e or one-half of the most recent sentence imposed by the
10 court less any risk reduction credit earned under the provisions of
11 section 18-98e, whichever is greater, may be allowed to go at large on
12 parole in the discretion of the panel of the Board of Pardons and
13 Paroles for the institution in which the person is confined, if (1) it

14 appears from all available information, including any reports from the
15 Commissioner of Correction that the panel may require, that there is a
16 reasonable probability that such inmate will live and remain at liberty
17 without violating the law, and (2) such release is not incompatible with
18 the welfare of society. At the discretion of the panel, and under the
19 terms and conditions as may be prescribed by the panel including
20 requiring the parolee to submit personal reports, the parolee shall be
21 allowed to return to the parolee's home or to reside in a residential
22 community center, or to go elsewhere. The parolee shall, while on
23 parole, remain under the jurisdiction of the board until the expiration
24 of the maximum term or terms for which the parolee was sentenced
25 less any risk reduction credit earned under the provisions of section
26 18-98e. Any parolee released on the condition that the parolee reside in
27 a residential community center may be required to contribute to the
28 cost incidental to such residence. Each order of parole shall fix the
29 limits of the parolee's residence, which may be changed in the
30 discretion of the board and the Commissioner of Correction. Within
31 three weeks after the commitment of each person sentenced to more
32 than two years, the state's attorney for the judicial district shall send to
33 the Board of Pardons and Paroles the record, if any, of such person.

34 (b) (1) No person convicted of any of the following offenses, which
35 was committed on or after July 1, 1981, shall be eligible for parole
36 under subsection (a) of this section: (A) Capital felony, as provided
37 under the provisions of section 53a-54b in effect prior to April 25, 2012,
38 (B) murder with special circumstances, as provided under the
39 provisions of section 53a-54b in effect on or after April 25, 2012, (C)
40 felony murder, as provided in section 53a-54c, (D) arson murder, as
41 provided in section 53a-54d, (E) murder, as provided in section 53a-
42 54a, or (F) aggravated sexual assault in the first degree, as provided in
43 section 53a-70a. (2) A person convicted of (A) a violation of section 53a-
44 100aa or 53a-102, or (B) an offense, other than an offense specified in
45 subdivision (1) of this subsection, where the underlying facts and
46 circumstances of the offense involve the use, attempted use or
47 threatened use of physical force against another person shall be
48 ineligible for parole under subsection (a) of this section until such

49 person has served not less than eighty-five per cent of the definite
50 sentence imposed.

51 (c) The Board of Pardons and Paroles shall, not later than July 1,
52 1996, adopt regulations in accordance with chapter 54 to ensure that a
53 person convicted of an offense described in subdivision (2) of
54 subsection (b) of this section is not released on parole until such person
55 has served eighty-five per cent of the definite sentence imposed by the
56 court. Such regulations shall include guidelines and procedures for
57 classifying a person as a violent offender that are not limited to a
58 consideration of the elements of the offense or offenses for which such
59 person was convicted.

60 (d) The Board of Pardons and Paroles shall hold a hearing to
61 determine the suitability for parole release of any person whose
62 eligibility for parole release is not subject to the provisions of
63 subsection (b) of this section upon completion by such person of
64 seventy-five per cent of such person's definite or aggregate sentence
65 less any risk reduction credit earned under the provisions of section
66 18-98e. An employee of the board or, if deemed necessary by the
67 chairperson, a panel of the board shall reassess the suitability for
68 parole release of such person based on the following standards: (1)
69 Whether there is a reasonable probability that such person will live
70 and remain at liberty without violating the law, and (2) whether the
71 benefits to such person and society that would result from such
72 person's release to community supervision substantially outweigh the
73 benefits to such person and society that would result from such
74 person's continued incarceration. After such hearing, if the board
75 determines that continued confinement is necessary, it shall articulate
76 for the record the specific reasons why such person and the public
77 would not benefit from such person serving a period of parole
78 supervision while transitioning from incarceration to the community.
79 The decision of the board under this subsection shall not be subject to
80 appeal.

81 (e) The Board of Pardons and Paroles shall hold a hearing to

82 determine the suitability for parole release of any person whose
83 eligibility for parole release is subject to the provisions of subdivision
84 (2) of subsection (b) of this section upon completion by such person of
85 eighty-five per cent of such person's definite or aggregate sentence. An
86 employee of the board or, if deemed necessary by the chairperson, a
87 panel of the board shall assess the suitability for parole release of such
88 person based on the following standards: (1) Whether there is a
89 reasonable probability that such person will live and remain at liberty
90 without violating the law, and (2) whether the benefits to such person
91 and society that would result from such person's release to community
92 supervision substantially outweigh the benefits to such person and
93 society that would result from such person's continued incarceration.
94 After such hearing, if the board determines that continued
95 confinement is necessary, it shall articulate for the record the specific
96 reasons why such person and the public would not benefit from such
97 person serving a period of parole supervision while transitioning from
98 incarceration to the community. The decision of the board under this
99 subsection shall not be subject to appeal.

100 (f) (1) Notwithstanding the provisions of subsections (a) to (e),
101 inclusive, of this section, a person convicted of one or more crimes
102 committed while such person was under eighteen years of age, who is
103 incarcerated on or after October 1, 2013, and who received a definite
104 sentence or aggregate sentence of more than ten years for such crimes
105 prior to, on or after October 1, 2013, may be allowed to go at large on
106 parole in the discretion of the panel of the Board of Pardons and
107 Paroles for the institution in which such person is confined. If such
108 person is serving a sentence of sixty years or less, such person shall be
109 eligible for parole after serving one-half of the sentence or ten years,
110 whichever is greater. If such person is serving a sentence of more than
111 sixty years, such person shall be eligible for parole after serving thirty
112 years, less any risk reduction credit earned under the provisions of
113 section 18-98e. Nothing in this subsection shall limit a person's
114 eligibility for parole release under the provisions of subsections (a) to
115 (e), inclusive, of this section if such person would be eligible for parole
116 release at an earlier date under any of such provisions.

117 (2) The board shall apply the parole eligibility rules of this
118 subsection only with respect to the sentence for a crime or crimes
119 committed while a person was under eighteen years of age. Any
120 portion of a sentence that is based on a crime or crimes committed
121 while a person was eighteen years of age or older shall be subject to
122 the applicable parole eligibility, suitability and release rules set forth in
123 subsections (a) to (e), inclusive, of this section.

124 (3) Whenever a person becomes eligible for parole release pursuant
125 to this subsection, the board shall hold a hearing to determine such
126 person's suitability for parole release. At least twelve months prior to
127 such hearing, the board shall notify the office of Chief Public Defender
128 and the appropriate state's attorney of such person's eligibility for
129 parole release pursuant to this subsection. The office of Chief Public
130 Defender shall assign counsel for such person pursuant to section 51-
131 296 if such person is indigent. At any hearing to determine such
132 person's suitability for parole release pursuant to this subsection, the
133 board shall permit (A) such person to make a statement on such
134 person's behalf, (B) counsel for such person and the state's attorney to
135 submit reports and other documents, and (C) any victim of the crime
136 or crimes to make a statement pursuant to section 54-126a. The board
137 may request testimony from mental health professionals or other
138 relevant witnesses, and reports from the Commissioner of Correction
139 or other persons, as the board may require. The board shall use
140 validated risk assessment and needs assessment tools and its risk-
141 based structured decision making and release criteria established
142 pursuant to subsection (d) of section 54-124a in making a
143 determination pursuant to this subsection.

144 (4) After such hearing, the board may allow such person to go at
145 large on parole with respect to any portion of a sentence that was
146 based on a crime or crimes committed while such person was under
147 eighteen years of age if the board finds that such parole release would
148 be consistent with the factors set forth in subdivisions (1) to (4),
149 inclusive, of subsection (c) of section 54-300 and if it appears, from all
150 available information, including, but not limited to, any reports from

151 the Commissioner of Correction, that (A) there is a reasonable
152 probability that such person will live and remain at liberty without
153 violating the law; (B) the benefits to such person and society that
154 would result from such person's release to community supervision
155 substantially outweigh the benefits to such person and society that
156 would result from such person's continued incarceration; and (C) such
157 person has demonstrated substantial rehabilitation since the date such
158 crime or crimes were committed considering such person's character,
159 background and history, as demonstrated by factors including, but not
160 limited to, such person's correctional record, the age and circumstances
161 of such person as of the date of the commission of the crime or crimes,
162 whether such person has demonstrated remorse and increased
163 maturity since the date of the commission of the crime or crimes, such
164 person's contributions to the welfare of other persons through service,
165 such person's efforts to overcome substance abuse, addiction, trauma,
166 lack of education or obstacles that such person may have faced as a
167 child or youth in the adult correctional system, the opportunities for
168 rehabilitation in the adult correctional system and the overall degree of
169 such person's rehabilitation considering the nature and circumstances
170 of the crime or crimes.

171 (5) After such hearing, if the board determines that continued
172 confinement is necessary, the board shall articulate for the record the
173 specific reasons why such person and the public would not benefit
174 from such person serving a period of parole supervision while
175 transitioning from incarceration to the community. The board shall
176 reassess such person's suitability for parole release at a later date to be
177 determined at the discretion of the board.

178 (6) The decision of the board under this subsection shall not be
179 subject to appeal.

180 [(f)] (g) Any person released on parole under this section shall
181 remain in the custody of the Commissioner of Correction and be
182 subject to supervision by personnel of the Department of Correction
183 during such person's period of parole.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2013</i>	54-125a
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JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Correction, Dept.	GF - Potential Savings	See Below	See Below

Municipal Impact: None

Explanation

The bill expands parole eligibility for inmates convicted for a crime committed when they were under the age of 18 and sentenced to more than 10 years in prison. To the extent that more inmates are granted parole, the agency will shift costs from incarceration to supervision in the community. On average, it saves approximately \$30,000 per inmate annually to supervise an inmate under parole instead of incarcerating them. There are currently approximately 200 inmates who fit the criteria of this bill.

In addition, the bill requires a parole hearing for inmates who meet the eligibility requirement, and a counsel to be appointed by the Office of the Chief Public Defender for indigent clients. It is anticipated that the Public Defender Services will be able to comply with this provision without additional resources.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Department of Correction Current Population Database

OLR Bill Analysis**sHB 6581*****AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING LENGTHY SENTENCES FOR CRIMES COMMITTED BY A CHILD OR YOUTH.*****SUMMARY:**

This bill establishes parole eligibility rules for someone who (1) committed a crime when he or she was under age 18 and (2) was sentenced to more than 10 years in prison. These rules apply as an alternative to existing rules if they make someone eligible for parole sooner. They also apply retroactively regardless of when inmates were sentenced and apply to those convicted of crimes that are otherwise ineligible for parole.

The bill requires a parole hearing for an offender who meets these eligibility requirements and a public defender to represent an indigent inmate at the hearing. It requires the Board of Pardons and Paroles to:

1. have certain information before making a decision,
2. consider certain criteria in order to release such an offender,
3. explain a parole denial, and
4. reassess a person's suitability for parole after a denial at a time determined by the board.

EFFECTIVE DATE: October 1, 2013

PAROLE ELIGIBILITY

Currently, someone is eligible for parole after serving (1) 50% of his or her sentence minus any risk reduction credits earned if convicted of a non-violent crime and (2) 85% of his or her sentence if convicted of a

violent crime, home invasion, or 2nd degree burglary. Someone convicted of the following crimes is ineligible for parole: murder, capital felony, murder with special circumstances, felony murder, arson murder, or 1st degree aggravated sexual assault.

The bill establishes alternative parole eligibility rules that can make someone eligible for parole sooner if he or she (1) committed a crime when he or she was under age 18 and (2) was sentenced to more than 10 years in prison. Under these rules, someone sentenced to:

1. up to 60 years in prison is eligible for parole after serving the greater of 10 years or half of his or her sentence or
2. more than 60 years in prison is eligible for parole after serving 30 years minus any risk reduction earned credits earned.

The bill applies retroactively regardless of when inmates were sentenced and applies to those convicted of crimes that are otherwise ineligible for parole. But the eligibility rules only apply to sentences for crimes committed when a person was under age 18. They do not apply to any portion of a sentence imposed for a crime committed when the person was age 18 or older. Existing parole eligibility rules apply to such a sentence.

REQUIRED PAROLE HEARING

The bill requires (1) a parole hearing when someone becomes parole eligible under the bill's provisions and (2) the board to notify the Chief Public Defender's Office and appropriate state's attorney at least 12 months before the hearing. The Chief Public Defender's Office must provide counsel for an indigent person.

At the hearing, the bill requires the board to permit:

1. the inmate to make a statement;
2. the inmate's counsel and state's attorney to submit reports and documents; and

3. a victim of the person's crime to make a statement, as with other parole hearings.

The board may also request (1) testimony from mental health professionals and relevant witnesses and (2) reports from the Department of Correction (DOC) or others. The board must use a validated risk and needs assessment tool and risk-based structured decision making and release criteria (existing law requires the board's chairwoman to adopt policies on these topics).

PAROLE RELEASE DECISIONS

After the hearing, the bill allows the board to release someone on parole if it:

1. is consistent with (a) enhancing public safety while holding an offender accountable to the community; (b) reflecting the offense's seriousness and being proportional to the harm to victims and the community; (c) using the most appropriate sanctions available, including prison, community punishment, and supervision; (d) having an overriding goal of reducing criminal activity, imposing just punishment, and providing meaningful and effective rehabilitation and reintegration of the offender; and (e) being fair, just, and equitable while promoting respect for the law;
2. appears from all available information, including DOC reports, that (a) there is a reasonable probability the person will live and remain at liberty without violating the law and (b) the benefits to the person and society from release to community supervision substantially outweigh the benefits from continued confinement; and
3. appears from all available information, including DOC reports, that the person shows substantial rehabilitation since committing the crimes considering the person's character, background, and history including (a) the person's prison record, age, and circumstances at the time of committing the

crime; (b) whether he or she showed remorse and increased maturity since committing the crime; (c) his or her contributions to others' welfare through service; (d) his or her efforts to overcome substance abuse, addiction, trauma, lack of education, or obstacles he or she faced as a child or youth in prison; (e) the opportunities for rehabilitation in prison; and (f) the overall degree of his or her rehabilitation considering the nature and circumstances of the crime.

The bill requires the board, if it does not release an offender, to articulate specific reasons for the record why the person and public would not benefit from the person serving on parole as a transition from prison to the community. The bill requires the board to reassess the person's suitability at a later time determined by the board.

The bill specifies that the board's decisions under these provisions are not appealable.

BACKGROUND

Risk Reduction Credits

By law, inmates can earn risk reduction earned credits except for those convicted of murder, capital felony, felony murder, arson murder, 1st degree aggravated sexual assault, or home invasion. The DOC commissioner can award up to five days of credit per month for (1) adhering to the offender's accountability plan, (2) participating in eligible programs and activities, and (3) good conduct and obeying institutional rules as designated by the commissioner (but good conduct and obedience alone is not enough to earn credits). An inmate can lose all or some of his or her credits. Credits reduce the inmate's maximum prison sentence but cannot reduce a mandatory minimum sentence. Credits can also make an inmate eligible for parole sooner, but, as of July 1, 2013, cannot be used by those convicted of violent crimes for this purpose.

Related Cases—U.S. Supreme Court

In *Graham v. Florida*, the U.S. Supreme Court ruled that the Eighth

Amendment prohibition against cruel and unusual punishment prohibits states from imposing sentences of life without parole for defendants younger than age 18 for non-homicide crimes. The Court stated that there must be “some meaningful opportunity” for release based on a defendant’s demonstrated maturity and rehabilitation. The Court stated that the Eighth Amendment does not prohibit a juvenile who commits a non-homicide crime from being kept in prison for life but it does prohibit making the judgment “at the outset that those offenders never will be fit to re-enter society” (130 S.Ct. 2011 (2010)).

In *Miller v. Alabama*, the U.S. Supreme Court held that the Eighth Amendment prohibits courts from automatically imposing life without parole sentences on offenders who committed homicides while they were juveniles (under age 18). The Court did not categorically bar life without parole sentences for juveniles but stated that a court must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison” (132 S.Ct. 2455 (2012)).

Related Bill

sSB 1062, favorably reported by the Judiciary Committee, among other things, (1) retroactively eliminates life sentences for capital felony, murder with special circumstances, and arson murder for offenders who committed these crimes when they were under age 18 and (2) requires a court to consider certain factors when sentencing someone who was between ages 14 and 18 at the time of committing a crime.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 29 Nay 15 (04/16/2013)